IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

WRIT PETITION NO. 4585 OF 2003

1. Shri Aba Hari Chavan and ors. .. Petitioners
Vs.
1. Bhimagonda Balgonda Patil and ors. .. Respondents

Mr. C.G. Gavnekar for petitioners.
Ms. Archana Kololgi h/f Mr. A.J. Chougule for respondent nos.1 to 4.

CORAM: B.H. MARLAPALLE, J.

Date : July 12, 2006.

P.C.:

1. The petitioners are the plaintiffs in RCS No.157 of 2001 and the learned Civil Judge, Junior Division at Ichalkaranji was pleased to allow the appliction at Exh.5 for temporary injunction vide his order dated 31/8/2001. The defendants challenged the said order in Misc. Appeal No.266 of 2001 and the learned IIIrd Ad-hoc Additional District Judge at Kolhapur was pleased to dismiss the said appeal vide his Judgment and Order dated 10/7/2002. In normal circumstances, therefore, there was no reason for the plaintiffs to approach this court.

2. However, the learned Judge of the Lower Appellate Court did not agree with the directions

given by the trial court to the defendants to remain present before the Tahsildar, Hatkanangale who was required to record a finding whether an alternative public way was available. The learned Judge of the Lower Appellate Court noted that such a direction was necessary when there are disputes regarding the availability of the alternative way and not when it was admitted that there was another public way available adjacent to the suit property. In fact, the allegations of the defendants that alternative way is available cannot be said to be admitted fact and, therefore, it was uncalled for, for the Lower Appellate Court to deal with the inquiry that was directed to be conducted under Section 143 of the M.L.R.C. 1966 by the trial court by way of an interlocutory order. No harm would be caused to the defendants if such an inquiry is conducted.

3. The petition is, therefore, disposed off with a direction that the order passed by the trial court on 31/8/2001 will hold the field in toto.

(B.H. Marlapalle,J.)